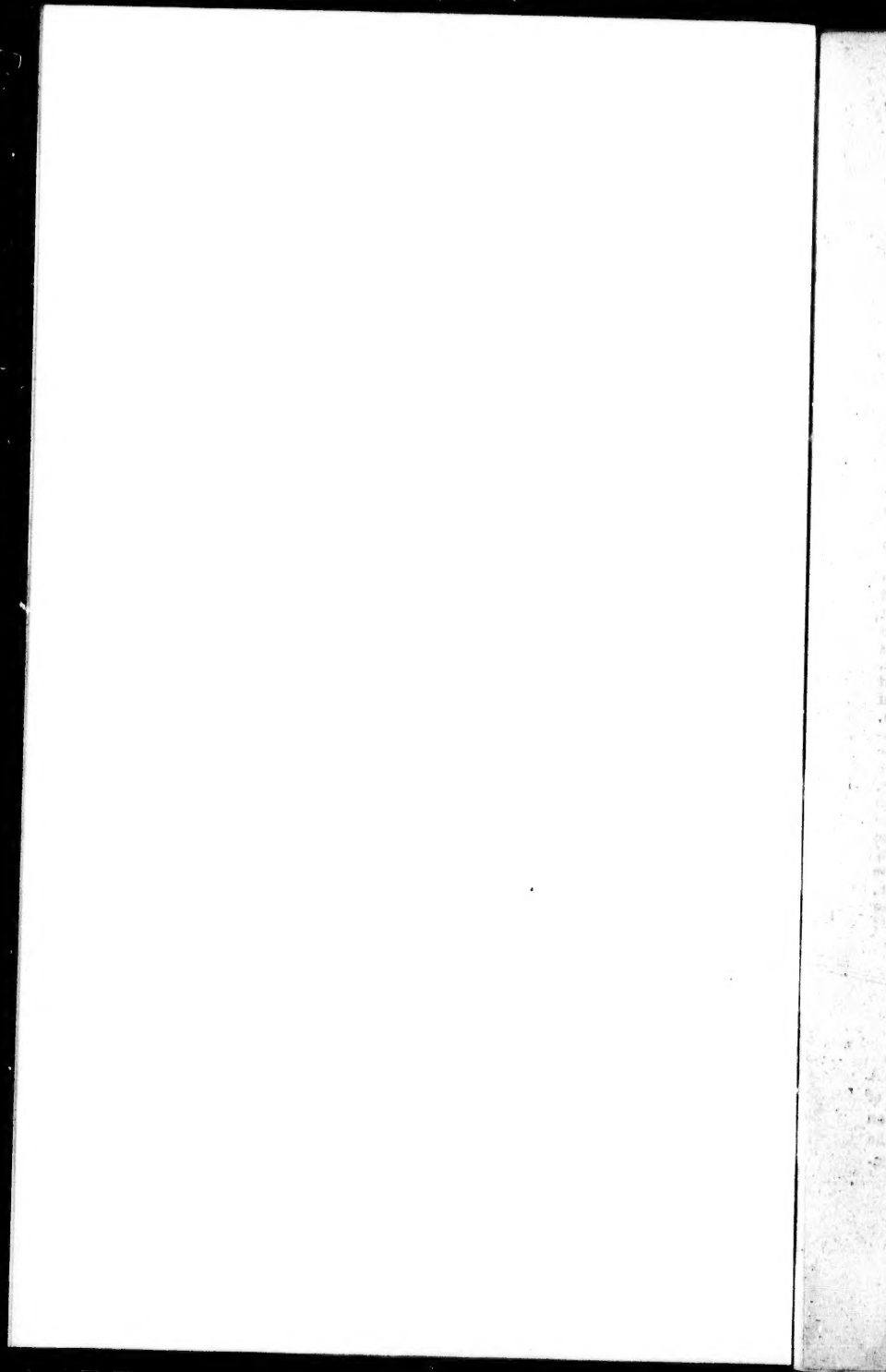




American Question.

PRICE 1s. 6d.

A LETTER, FROM A CALM OBSERVER,

TO A

Noble Lord,

ON THE SUBJECT

OF THE LATE DECLARATION

RELATIVE TO THE

ORDERS IN COUNCIL.

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1812.

PREFACE.

To those who doubt, and to those who believing, still regret, the necessity, in Courts of Justice, of the Old Bailey-practice of examining witnesses, it must be painful to observe a mode so little dignified admitted at the bar of one of the great councils of the nation; especially where such tactics indicate but too plainly the chicane that may be expected to follow.

Since the letter here presented to the public was written, it has appeared but too plainly that a discrimination is intended to be advanced between the Orders in Council, and the notification of blockade of the 16th of May, 1806; and in order to trip the advocates for peace and free commercial intercourse with the United States, the importance of maintaining our maritime rights will be prostituted in an unrighteous contest, in which the false pretence of a desire to invade or diminish them on the part of that government will be as usual unblushingly asserted.

But whether this notification is to be considered as an Order in Council, to which it is equivalent, or as merged in the subsequent Order of January, 1807; as Mr. Pinkney supposed it, there is no doubt that its existence in the shape of a mere proclamation blockade is incompatible with the conditions upon which alone the President is authorised to restore the intercourse between the two countries. Since it is an *edict* that violates the neutral commerce of the United States; not so a real blockade. This subject is particularly treated in the letters in a late pamphlet from a Cosmopolite to a Clergyman.

There is another branch of this question, that should not pass unnoticed. In a late publication of the exports for seven years, an average is made up of the four first, and of the three last years. Fallacies are easily practiced in these accounts; but the object here is too glaring, it can be only by showing a nearly equal trade on the average of each of the two periods to keep the actual state out of view. Averages for years back are very good data for forming an estimate where the course of things is the same; but is there any thing in the three last years, taken collectively, that can furnish a perspective average? Can the year 1810 for example, when exportations to America were free, joined to that part of 1811, in which a few goods were exported, form an anticipatory average for 1812, when we are exporting none at all? how ridiculous!!

Just Published, by the same Author,

A SERIES OF LETTERS FROM A COSMOPOLITE TO A CLERGYMAN; containing a temperate Inquiry into the Subjects of Dispute between GREAT BRITAIN and AMERICA: with remarks on the erroneous opinion entertained in this country, relative to the partiality of AMERICA towards FRANCE; including authentic documents to prove the contrary.

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A LETTER,

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MY LORD,

THE declaration published in the *Times* of yesterday having led to the following reflections, I pray your Lordship to receive them as the dictate of that cordial desire for harmonious intercourse between Great Britain and the United States of America, which is most natural to a man having no special bias to mislead him. And when I assure your Lordship that I have no other motive, I am confident you will excuse the freedom with which, to be better understood, I shall not hesitate to treat the subject.

My chief object is to show the distinction, which ought to be made between *French pretensions* and *American acquiescence*,—two objects which I am convinced have been most unwarrantably blended; and which, with all due deference, have been, and, in the document before us, are continued to be so blended, without excuse on the part of his Majesty's ministers, and with a view to extenuate measures, which, with the knowledge they ought to possess of the facts, cannot be excused.

The obligation of his Majesty's ministers, to distinguish in this case between French declarations and American acquiescence, might be very readily shown: but I shall not grudge the trouble to take up the subject in the order in which it presents itself; and hope your Lordship will not find it tedious, though collateral considerations should necessarily be mixed in the narrative.

The revocation of the decrees of Berlin and Milan, as announced in the letter of Champagny to General Armstrong of the 5th of August, 1810, (the usual mode of such communications, as well in England, as in France,) is in the following words: "*Dans ce nouvel état de choses, Je suis autorisé à vous déclarer, Monsieur, que les décrets de Berlin et Milan sont révoqués, et qu'au 1 Novembre, ils cesseront d'être en force, bien entendu qu'en conséquence de cette déclaration les Anglois révoqueront leurs Ordres de Conseil, et renonceront au nouveau principe de blocus qu' ils ont tenté d' établir; ou que les Etats Unis, conformément à l' acte que vous venez de communiquer, feront respecter leurs droits par les Anglois.*"

On the form and manner of this declaration I am aware there are different constructions. On the part of France it is contended, that as the United States were the only neutral power, it was to them alone that the renunciation, and the conditions of it, could be properly addressed. In England there are those that consider, that the instrument of revocation should be of a more general tenor. However this question may be settled in respect to any other party, it is clear that the mode, as respected the United States, was unexceptionable. In what light it ought to have been viewed by his Majesty's ministers, will be best seen by a short analysis of the words of the act.

The Berlin and Milan decrees are declared to be revoked, and a day is appointed, on which they shall cease to be in force, under certain conditions, with which his Majesty's government had previously bound itself in that case to comply; or an alternative condition, with which the United States had bound themselves to comply.—The conditions required of England were, that she should revoke her Orders in Council, and renounce her new principle of blockade.—The principle of blockade here referred to is evidently that blockade, which is no blockade, to wit, a blockade by proclamation, wanting all the essentials to constitute its legality, according to the construction of the law of nations, of the British courts of Admiralty, and of the government itself, as declared in numerous instances, and as particularly communicated to the United States through Mr. Merry, in his letters to Mr. Madison of the 12th of April, 1804; and of which no justification has ever been pretended, save on the principle of retaliation, to which the revocation in question would put an end.—The pretence of the doctrine of blockade now set up by France, cannot, with any propriety, be made retrospective, in aid of the construction of the letter of Champagny above quoted.—The new principle therein referred to,—one and indivisible, as your Lordship will observe,—not new principles,—could only be that of blockade by proclamation, then lately set up.—Moreover, it will be seen in the sequel, that the pretensions now set up by the French government were, previously to that date, not only not avowed, but absolutely disavowed, by the government of the United States, in documents that could not fail to be known, as well by the French, as by his Majesty's govern-

ment.' Had the abandonment of the Orders in Council been the consequence of this revocation, or had any judicial

29th April, 1812.

' In the speech of Mr. Rose of last evening on the petitions against the Orders in Council, referring to the Berlin decree, he asserts that the French minister explained the exclusion of ships from places not fully blockaded, to mean from places not besieged by land, as well as by sea; but there is not a word of land in the case. In the exordium to the Berlin decree he complains, that England declared blockaded places, before which she had not a single vessel of war;—although a place ought not to be considered blockaded, but when it is so invested as that no approach to it can be made without imminent hazard. He also complains that England extends the right of blockade to ports not fortified, and leaves ample room for prevarication on the question of what constitutes a legal blockade. The evasions that he might have made, however, cannot, I conceive, be taken as conclusive of the question, even as between him and England, still less can they enter into the question of principle or construction, as between England and the United States. There is another passage in this speech of Mr. Rose, which cannot be overlooked. He thinks the blockade of the coast from Brest to the Elbe perfectly right, and asserts that "it was certainly legitimate on the ordinary principles of the law of nations, for we had a naval force *fully competent* to enforce the order." This is something worse than *Crede quod habes, et habes*,—where the principle of the law of nations is to be found, that supposes a blockade to exist because it might exist, I am at a loss to imagine. The sun shines at this moment; it was cloudy an hour ago, and might have rained; but it has not rained, neither does it rain at present. From what has been asserted above, and still more from what follows, in the text, it appears that no such very ordinary principles enter into the British construction of the law of nations.

There is yet another remark to be made on this speech of Mr. Rose. The Right Honorable Gentleman is reported to have said as follows: "Then came the decree of Rambouillet, ordering the confiscation (he should have said sequestration) of American property, which was tantamount to a declaration of war; and when Mr. Armstrong complained, he was told that the measure was consonant to the principles of eternal justice, and America was declared to be at war with England, whether

decision shown that they had ipso facto become null and void, I am not prepared to say, that no prevarication on the part of the enemy, nor any paramount measures would have been adopted, but clear it is that any such measures

she would or not." It is not the contempt of chronological order, by which events of more than two years' distance are first inverted, and then amalgamated, that induces me to notice this passage. Anachronism is pardonable at a certain time of life, even in a gentleman who may have justly boasted, at an earlier period, of habits of official accuracy.

The decree of Rambouillet, to be sure, which was dated the 23d of March, and published the 14th of May, 1810, could not very well have been the subject of complaint on the part of Mr. Armstrong, upon which, he was told, on the 11th of the preceding February, that the measure was consonant to the principles of eternal justice; neither could it follow, on the 15th of January, 1808, that America was declared to be at war with England, whether she would or not. No doubt, this and many other impertinent expressions are to be found in the French correspondence, as well as the spirited and appropriate answers of the government of the United States and its ministers, which may be seen in a Pamphlet lately published, intitled "The Dispute with America considered, in a Series of Letters from a Cosmopolite to a Clergyman." But the error I wish particularly to point out is that which disparages the translation in the text, respecting the eternal principles of justice. The words are (Cadore to Armstrong, 14th of February, 1810,); "Sa Majesté regarderait ses décrets de Berlin et de Milan comme attentatoires aux principes de justice éternelle, s'ils n'étoient la conséquence obligée des arrêts du conseil Britannique, et surtout de ceux de Novembre, 1807."

Surely these words, which, however, I find the Right Honorable Vice-President may have seen erroneously translated in the Newspapers, convey a meaning even with respect to the decrees they treat of, very different from what could be imagined from those mistaken by him; and as I find M. de Cadore, in this same letter, desiring Mr. Armstrong not to submit to any blockade which is not real, "ni à aucun décret de blocus, à moins que ce blocus ne soit réel," I cannot but consider how different his pretexts must have been, if instead of the competency above mentioned, the Right Honorable Gentleman had been able to assert the fact,

would have been obnoxious to the severest censure, and would have thrown on him the odium from the people on the continent, which he has dexterously turned upon his adversary. Not only the words of the decrees themselves would in such case be turned against him, but the very strong expression in the note of the Minister of exterior relations to General Armstrong, of the 14th of February, 1810; "His Majesty would consider his decrees of Berlin and Milan, as violating the principles of eternal justice, if they were not the necessary consequence of the British Orders in Council, and, above all, of those of November, 1807."

The alternative enjoined on the United States, as depending on themselves, was simply that they should make their rights respected, conformably to the law, which they had promised in such case to put into execution; and while that law remains in force as the evidence of their resistance of the unlawful invasion of their rights; their flag cannot be considered denationalized. The period, within which it would have been competent for government to revoke the Orders in Council, is not accurately defined; but if at any time between the 5th of August, (the date of the revocation) and the first of November, when it was to take effect, the Orders in Council had been withdrawn, Bonaparte would have had no excuse, for maintaining his decrees, that would have satisfied his subjects, or his vassals. I have no doubt, my Lord, that the event, as it turned out, was much more conformable with his views, and indeed precisely that which he contemplated. This, however, is the view of the case as between France and England: the main object of my troubling your Lordship:—the difference between the pretensions of France and the acquiescence of America, is yet

to be considered. And here I will not stop to inquire by what fatuity, or by what design, but shall simply observe, that it does appear to me, there is, somewhere, a latent determination to ~~an~~thrall the United States in the war against England, and to cajolé the people into a belief of its necessity:—it does appear to me that, without something of this kind, it would be impossible that the persevering efforts of the United States, year after year, to use the words of Mr. Madison, and war after war, to conciliate and place all the subjects of difference on a just footing, should not only fail of their effect, but be perverted and misrepresented in a manner so artful and continual, that not only what is not true, but the direct contrary to the most palpable truths are made to pass current, till nothing but the severest consequences of the error will stop them.

12 On the declaration before us, and the debates that preceded it, clearly indicating the quarter from whence it came, the pretensions of France are so artfully twisted with the pretended hopes, that when America comes to see, she will reject them, nay, it has even been so insultingly said, that she will find herself the dupe of France, that I will venture to say nine people out of ten, that have read them, consider America as asserting the same doctrines, and demanding the same conditions on the revocation of the Orders in Council, as respects the United States, as have lately been promulgated to the conservative senate. But ought there not, my Lord, to be some evidence of this, before it is so conclusively determined?—is there any such evidence, and where is it?—Bonaparte has demanded now more than he dared think of on the 5th of August, 1810; and his demands will probably progress with the march of his Douaniers. A year hence

you will find him demanding, that enemy's ships, as well as goods, shall pass the ocean freely; but what have the United States to do with that?—it will puzzle administration, my Lord, to find any where an acquiescence in these modern doctrines; and an acquiescence should be proved before the United States are implicated in the pretension. But what will the nation say, if they should discover, not only that Ministers, with whom the burden of proof should lie, have no evidence to produce to this effect, but that they are possessed of palpable evidence to the contrary;—evidence not hidden from them, nor afar off, but nigh unto them in their heart, and in their mouth;—evidence, which, if those of them that have been long acting in these concerns, do not possess at their fingers' ends, they are ignorant of what it is their special duty to know: and if they do possess it, they are most cruelly deceiving the public.—I will now take the liberty of placing it before your Lordship, or a competent part of it, to prove the fact beyond all doubt. And first on the question of free ships, free goods.

In the project of a treaty inclosed in the instructions of Mr. Madison to Mr. Monroe, the 5th of January, 1804, after enumerating the articles of which contraband of war shall consist, he adds “and no other articles whatever, not here enumerated, shall be reputed contraband, or liable to confiscation, but shall pass freely without being subjected to the smallest difficulty, *unless they be enemy's property.*” In the treaty of the 31st of December, 1806, article 8th, the above instruction is carried into effect, but it should have been observed in the order of date, that, in the observations accompanying the plan, Mr. Madison has the following words: “She (Great Britain) will find in both (received authorities and usage) that a neutral

vessel does not protect certain objects denominated contraband of war, including enemies serving in the war, nor articles going into a blockaded port; nor *as she has maintained, and as we have not contested, enemy's property of any kind.*"

I will not trouble your Lordship with any other quotations on this subject, though it was my intention; it will be a shorter mode to observe that an examination of the correspondence, and of the public documents of late years, and even of the treaty of Lord Grenville with Mr. Jay, will show a desire on the part of the American government to establish the principle of free ships, free goods, and the perspective hope so to fix it when both nations shall be at peace; but the surrender of the pretension, nevertheless, to the English doctrine on that subject.

On the subject of blockade, Mr. Madison, in a letter to Mr. Thornton, of the 27th of October, 1803, writes as follows:—"The law of nations is perhaps more clear on no other point than on that of a siege or blockade, such as will justify a belligerent nation in restraining the trade of neutrals. Every term used in defining the case, imports the presence and position of a force rendering access to the prohibited place manifestly difficult and dangerous. Every jurist of reputation, who treats with precision this branch of the law of nations, refers to an actual and particular blockade. Not a single treaty can be found, which undertakes to define a blockade, in which the definition does not exclude a general or nominal blockade, by limiting it to the case of a sufficient force so disposed as to amount to an actual and particular blockade. To a number of such treaties, Great Britain is a party. Not to multiply references on the subject, I confine myself to the fourth article of the convention of June, 1801, between

Great Britain and Russia, which, having been entered into for the avowed purpose ‘*of settling an invariable determination of their principles upon the rights of neutrality,*’ must necessarily be considered as a solemn recognition of an existing and general principle and right, not as a stipulation of any new principle or right limited to the parties themselves. The article is in the words following: ‘that in order to determine what characterises a blockaded port, that denomination is given only to a port where there is, by the dispositions of the power, which attacks it with ships stationary or sufficiently near, an evident danger of entering.’”

Mr. Thornton having transmitted this representation to his Majesty’s government, Mr. Merry, who succeeded him, was instructed to communicate to Mr. Madison the instructions which the Lords of the Admiralty sent to Commodore Hood, and the Judges of the Vice-Admiralty Courts in the West Indies; which Mr. Merry inclosed in a letter to Mr. Madison of the 12th of April, 1804, in the shape of copy of a letter from Sir Evan Nepean to Mr. Hammond, to wit, “not to consider any blockade of those islands as existing, unless in respect to particular ports, which may be actually invested, and then not to capture vessels bound to such ports, unless they shall previously have been warned not to enter them.”

The instructions of Mr. Madison to Mr. Monroe, of the 5th of January, 1804, anticipated this definition, and in those to Messrs. Monroe and Pinkney of the 17th of May, 1806, he refers to it as a rule in the meditated treaty. In a letter of so old a date as the 20th of September, 1800, from Mr. Secretary Marshall to Mr. King, the necessity of an investment by land is given up as a departure from principle, which has received some sanction

from practice; and in a letter of so late a date as the 14th of January, 1811, from Mr. Pinkney to Marquis Wellesley, we have the following words:

“It is by no means clear that it may not fairly be contended, on principle and early usage, that a maritime blockade is incomplete with regard to states at peace, unless the place, which it would affect, is invested by land as well as by sea. *The United States however have called for the recognition of no such rule.*”

In respect to ship-timber too, and other articles of naval equipment, we need only look to the ninth article of the treaty of the 31st of December, 1806, to perceive that the United States conform to the English doctrine, on that subject also. There is nothing in the objections to that treaty that goes to controvert this article.

Now, my Lord, I beg leave to ask where is the evidence of American acquiescence, that should involve the United States in the consequences of the French pretensions?—in my conscience, I must say, and I hope your Lordship will join me, that not only do I find no acquiescence on the part of the American government to French principles; but that on moot points,—points much mooted in Europe,—points in which England stands alone in Europe, and in which the faith of America has been much shaken, she has still acquiesced in the doctrine of England.—Well then may Mr. Pinkney say, as he does in the very letter to Lord Wellesley above quoted, “What I have to request of your Lordship therefore is, that you will take our views and principles from our own mouths; and that neither the Berlin decree, nor any other act of any foreign state, may be made to speak for us what we have not spoken for ourselves.”

A few words, my Lord, on the consequences of this unfortunate and most erroneous identification of French

and American principles.—The exports from the United States to the Peninsula in one year have amounted at the cost in America, in round numbers, to eighteen millions of dollars. The flour, purchased at an average of nine dollars per barrel, has been furnished to the army by contract at fifteen; a rate at which, when the enormous and hitherto unknown discount of bills on England of more than 20 per cent is added to the freight and insurance, little profit would remain; and as the other articles may be supposed to have averaged in proportion to the flour, we must set down thirty millions of dollars thus expended in specie, which, at five shillings each, amount to no less a sum than 7,500,000*l*. Had the edicts of Great Britain been so revoked as that they should cease to violate the neutral commerce of the *United States*, instead of being paid in specie or its equivalent, in a circuitous exchange, all this property, with the exception of some trifling charges of the ships while in port, would have been paid for in British manufactures, the raw materials of which, imported from abroad, with even the addition of the value of so much of the labor employed in them, as might possibly be bestowed on agriculture, would not exceed at most 1,500,000*l*.—Here then is a direct loss to the nation, however the sum might have been distributed at home, of six millions by the American non-importation, and nothing can be more erroneous than to consider this a temporary inconvenience. Every hour of the continuance of this system is adding to the future exclusion of a portion of those manufactures, (the generative produce by which the exhausture of former wars has been supplied) by the establishment of others in the United States; where the comparative cheapness of living, which has heretofore influenced the locality of manufactures at home, is enhanced both in fact and in prospect by the measure which is transplanting them.

In the above estimate are not included the value of twenty millions of dollars (first cost) imported directly into Great Britain, and paid for, if not in specie, as the bread purchased for the Peninsula, in something equivalent; not certainly in the profitable mode by manufactured goods.¹

It cannot be uninteresting, at this moment, to consider among what hands this money, thus sent out of the kingdom, would have circulated. The sale of those manufactures, and the consequent demand for more, would in their

¹ Mr. Rose, in his speech above referred to, has also noticed these exports from the United States. They include only the exports of domestic articles; and the inference he draws from the circumstance appears to me to be erroneous in all its branches. That thirty-eight millions, out of forty-five, went to Great Britain, and her allies, and only one and a half millions to France, shows to be sure that the United States have a profitable export trade to Great Britain and her allies; as necessary to the sustenance of her army and her allies in the Peninsula, as hard to spare from the revenue at home. But the mode in which these goods are paid for, is the most pernicious to the interests of the nation that can be imagined. Nothing but the importation of cambrics and laces from France can be so ruinous, even in the small proportion that these articles bear in respect to amount; it is observable too that the disparity arises from the measure complained of. Before the Orders in Council existed, the exports to France and to other foreign ports in Europe bore a very different proportion. Of seventy-eight millions of dollars, total amount of the exports of the United States in the year 1804, only twenty-two millions were exported to Great Britain and all her dependencies; one third of which was sent to the British West Indies; the same proportion may be presumed, where particulars cannot be had, of the one hundred and eight millions to which the exports had progressively increased by the year 1807, the last preceding the operation of the Orders in Council. But the difference here was that, instead of paying in specie, or at a ruinous course of exchange, for our own consumption of American produce, the proceeds of a great portion of that consumed abroad were remitted here to pay for their consumption of our manufactures; and not for their consumption only, but for that of other markets also, which, with all our pretensions, we know not how to find.

direct operation have furnished employment to the valuable subjects become paupers, and desperate paupers; yet Mr. Perceval asks, is there any one who imagines that under any pretence of conciliating America we ought to rescind our Orders in Council?—*Quis furor iste novus?* ✕

If your Lordship will give me credit for the sentiments expressed at the beginning of this letter as respects myself; you will readily conceive that I must be one of the last to believe that either the prince or the people is inimically disposed towards the United States. And if it conforms to the freedom I have asked leave to use, to notice, in the opinions that Ministers have thought fit to propagate, a corps de reserve to justify them in the event of a rupture; I hope they are not so inveterately determined to provoke it, and that such determination does not enter so necessarily into the scheme of a mysterious policy, as to be incapable of allowing the true case to be known, or of yielding to what must be the desire of both prince and people under a just estimate of the real fact.

To inflict on your friend the evils provoked by your enemy is unjust, I think, in your Lordship's estimation. With those who plead necessity, it is a subject of regret. But to suffer the contested rules of your enemy to influence the right of your friend who has subscribed to your own—to allow a profitable intercourse with your friend to depend on, or be suspended by, the doctrine of your enemy, which he has rejected, is neither just nor necessary. Need I add my conviction, after what has been said, my Lord, that in the present instance it is as ruinous as it is wicked.

London, April 24th, 1812.

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 to Mr. Perceval

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